

## COUNTY NOTICES PURSUANT TO A.R.S. § 49-112

Because each county writes rules and regulations in its own unique style, County Notices published in the *Register* do not conform to the standards of the *Arizona Rulemaking Manual*. With the exception of minor formatting changes, the rules (including subsection labeling, spelling, grammar, and punctuation) are reproduced as submitted.

### NOTICE OF RULEMAKING DOCKET OPENING

#### MARICOPA COUNTY AIR QUALITY DEPARTMENT

[M08-422]

1. **Title and its heading:** Maricopa County Air Pollution Control Regulations  
**Rule and its heading:** P-27 Vehicle Parking and Use on Un-Stabilized Vacant Lots
2. **The subject matter of the proposed rule(s):**  
Maricopa County Air Quality Department (MCAQD) is proposing to revise the recently enacted ordinance: P-27 Vehicle Parking and Use on Un-stabilized Vacant Lots. The proposed revisions will amend Section 4: Violations, Notices, and Penalties and clarify the definition of Road or Highway. Also, as part of this rulemaking, the MCAQD may add, delete, or modify additional rules and ordinances as necessary.
3. **A citation to all published notices relating to this proceeding:**  
Notice of Rulemaking Docket Opening: 13 A.A.R. 3375, October 5, 2007  
Notice of Proposed Rulemaking: 13 A.A.R. 3711, November 2, 2007  
Notice of Final Rulemaking: 14 A.A.R. 1148, April 11, 2008
4. **The name and address of department personnel with whom persons may communicate regarding the proposed rule(s):**  
Name: Kathleen Sommer or Jo Crumbaker  
Address: 1001 N. Central Ave., Suite 595  
Phoenix, AZ 85004  
Telephone: (602) 506-6706 or (602) 506-6705  
Fax: (602) 506-6179  
E-Mail: KathleenSommer@mail.maricopa.gov or jcrumbak@mail.maricopa.gov
5. **The time during which the department will accept written comments and the time and place where oral comments may be made:**  
To be announced in the Notice of Proposed Rulemaking
6. **A timetable for department decisions or other action on the proceeding, if known:**  
To be announced in the Notice of Proposed Rulemaking

### NOTICE OF EXPEDITED RULEMAKING

PURSUANT TO A.R.S. 49-471.01 ET SEQ.

#### PINAL COUNTY AIR QUALITY CONTROL DISTRICT

[M08-437]

1. **Preamble**
2. The Pinal County Air Quality Control District, an operating division of Pinal County, proposes that the Board of Supervisors ("Board") adopt new rules in response to the EPA's formal disapproval of Pinal County's request to include a number of "reasonable precaution" rules as elements of the State Implementation Plan ("SIP") required under §110 of the Clean Air Act ("CAA"). See 72 Fed. Reg. 41896 (8/1/07). The District further proposes that the Board designate the responsive changes as proposed revisions to the Arizona State Implementation Plan.
3. The EPA's disapproval of Pinal's SIP-revision proposal also triggered a sanction clock pursuant to CAA §§110(m) and 179.
4. Geographically, the proposed revisions will apply to the Hayden PM<sub>10</sub> moderate nonattainment area, as recently re-defined at 72 Fed. Reg. 14422 (3/28/2007). As a practical matter, the affected area contains a vast expanse of Sonoran Desert upland, some unpaved roads, a couple of small mining operations, and one significant source, namely the ASARCO Ray Mine. The Ray Mine constitutes a sizeable facility, with an open pit roughly a mile across, two and a half miles in length, and 1/4 mile deep, lying within a nine-square mile complex. In addition, portions of the tailings piles associated with the ASARCO Hayden Complex also lie within Pinal County. However, those tailings piles

functionally constitute an element of the ASARCO concentrator and copper smelter that lie within Gila County. As a result, regulatory jurisdiction over those facilities rests with the Arizona Department of Environmental Quality ("ADEQ"). In addition, ADEQ holds exclusive jurisdiction with respect to facilities for the "[s]melting of metal ore." See A.R.S. §49-402(A)(2).

5. In a nonattainment area, the EPA-approved SIP must include enforceable provisions requiring sources in a moderate nonattainment area to implement reasonably available control measures ("RACM"), including reasonably available control technology ("RACT"). See CAA §172(c)(1). The RACM/RACT requirement applies to "all source categories unless the State demonstrates that a particular source category does not contribute significantly to PM-10 levels in excess of the NAAQS (i.e., de minimis sources)." See 72 Fed. Reg. 41896, 41898.
6. The EPA requires that "enforceable" rules must establish objective standards, and may not leave application of the standards to the discretion of local officials. See 72 Fed. Reg. 41896, 41897. Accordingly, the EPA has explained that at a minimum, Pinal's "reasonable precaution" rules must have a back-stop of a 20% opacity standard. "To meet a RACM standard, such fugitive dust requirements generally must require operations to meet a minimum 20% opacity standard." See e-mail from Andrew Steckel, Air Quality Rulemaking Division Director, EPA Region IX to Don Gabrielson, Director, Pinal County Air Quality (10/1/08) ("Steckel e-mail").
7. The Steckel e-mail indicated that the 20% opacity standard must be extended to three source categories, namely: construction; roadway building, use and maintenance; and bulk material handling, storage and transport. Each of those categories constitutes a form of anthropogenic activity. None of those activities involve blasting operations as commonly conducted for purposes of fracturing ore, rock or overburden. In addition, to the extent wind-action might compound emissions from any of the listed activities, the 20% opacity standard would logically be assessed not in the absolute, but as an incremental contribution directly attributable to emissions from the listed anthropogenic activity. Moreover, meteorological events that would qualify ambient data for exemption under the "exceptional events rule" (See 72 Fed. Reg. 13559 (3/22/07)) would also logically justify exemption from the 20% opacity standard.
8. Accordingly, the District proposes that the Board adopt a 20% opacity standard to apply to any PM<sub>10</sub> source category in the Hayden PM<sub>10</sub> nonattainment area that has not been shown to not contribute significantly to PM<sub>10</sub> levels in excess of the NAAQS.
9. The Board of Supervisors has authority to adopt air quality rules. A.R.S. §49-479. Given the obligatory nature of the proposed action, this rule-adoption will follow the expedited rule-making process defined in A.R.S. §49-471.08. Following publication of a notice of proposed rulemaking and a 30-day public comment period, the proposal along with a summary of any comments received will be submitted to the Board of Supervisors for consideration and possible adoption. The date and location for the hearing-of-adoption before the Board of Supervisors will be separately scheduled and noticed in accord with the requirements of A.R.S. §49-479 and 40 C.F.R. §51.102. Tentatively, that hearing before the Board of Supervisors is scheduled for December 10, 2008.
10. Those wishing further information regarding any aspect of this proposal may contact Scott DiBiase, Planning Manager, Pinal County Air Quality, 31 N. Pinal St., Building F, Florence, AZ, 520-866-6969. To the extent possible, the District will also post information on the County's web site, [www.co.pinal.az.us](http://www.co.pinal.az.us), under the "air quality" link.
11. Given that this proposal responds to a statutory mandate, there are no supporting studies nor has the District prepared an economic, small business or consumer impact discussion. There are no prior register notices pertaining to this proposal.
12. If adopted, these revisions will take effect and become enforceable upon adoption by the Board of Supervisors, with the exception of deferred enforcement where allowed by statute.
13. To clearly identify those rules that will be presented for inclusion in the Arizona State Implementation Plan, corresponding revisions to §1-1-105 are also proposed.
14. Pursuant to A.R.S. §49-471.08(A)(2), Donald P. Gabrielson, the Control Officer for the District, finds that the EPA has articulated in compelling fashion that federal law requires that for any source category in the Hayden nonattainment area, other than any source category shown to be de minimis, a 20% opacity standard must be applied. The Control Officer finds that the proposed rules are substantially identical to the sense, meaning and effect of the underlying federal mandate.
15. **Text of Proposed Rule Revisions**

## **Chapter 1 - General Provisions and Definitions**

### **Article 1 - Provisions**

#### **1-1-105. SIP list**

- A. As a declaration of Board policy rather than a rule, and subject to the limitations of paragraphs B. and C. of this section, the Board of Supervisors expressly designates the following list of sections within this Code, to be presented to the Governor of Arizona for transmittal to the Administrator of the EPA with a request that they be included as elements in the Arizona SIP:
  1. Chapter 1
    - a. Article 1.(As amended 5/14/97 and 5/27/98), except for §§1-1-105 and 1-1-107.
    - b. Article 2 (As amended 5/14/97 and 7/12/00) except for §1-2-110.
    - c. Article 3. (As amended 5/14/97, 5/27/98 and 10/27/04, except for §1-3-130 and the definition in §1-3-140.82 (10/12/95) of "maximum achievable control technology.")
  2. Chapter 2

- a. Article 1. (As amended 10/12/95).
- b. Article 2. (As amended 5/14/97).
- c. Article 3. (As amended 10/12/95).
- d. Article 4. (As amended 10/12/95).
- e. Article 5. (As amended 10/12/95).
- f. Article 6. (As amended 10/12/95).
- g. Article 7. (As amended 10/12/95).
- h. Article 8. (As amended 5/18/05, as amended 12/10/08).
3. Chapter 3
  - a. Article 1. (As amended 5/14/97, and 5/27/98 and 7/12/00), excluding:
    - i. §3-1-020
    - ii. §3-1-045
    - iii. §3-1-080
    - iv. §3-1-100
  - b. Article 2. (As amended 10/12/95, 5/27/98 and 7/29/98).
  - c. Article 3. (As amended 10/12/95).
  - d. Article 8. (As amended 10/12/95 and 10/27/04).
4. Chapter 4
  - a. Article 1. (As amended 2/22/95).
  - b. Article 2. (As amended 5/14/97, 7/12/00 and 10/27/04, excluding §§4-2-020 and 4-2-030).
- B. Notwithstanding the approval as elements of the SIP of those provisions of the Code identified in paragraph A of this section, those provisions, save §3-1-084 which shall be expressly exempted from the limitation of this paragraph, shall operate as elements of the SIP only insofar as they pertain to:
  1. "construction," as defined in Nov. '93 Code §1-3-140.28; or
  2. "modification," as defined in Nov. '93 Code §1-3-140.85; and
- C. Notwithstanding the approval as elements of the SIP of those provisions of the Code identified in paragraph A of this section, neither those provisions nor any permit conditions imposed pursuant to those provisions shall:
  1. Operate as elements of the SIP insofar as they pertain to other than "conventional pollutants," as defined in §1-3-140.33;
  2. Operate as elements of the SIP insofar as they pertain only to a requirement arising under, or pertain to a source subject to regulation exclusively by virtue of a requirement arising under:
    - a. §111 of the Clean Air Act; or
    - b. Title IV of the 1990 amendments to the Clean Air Act; or
    - c. Title VI of the 1990 amendments to the Clean Air Act; or
    - d. Any section of this Code that is not a part of the SIP;
  3. Operate as an element of the SIP, at least insofar as they impose a "fee";
  4. Operate as an element of the SIP, at least insofar as they require a "certification";
  5. Operate as an element of the SIP, at least insofar as they impose obligations pertaining to "renewals";
  6. Operate as an element of the SIP, at least insofar as they impose requirements regarding "excess emissions"; or
  7. Operate as an element of the SIP, at least insofar as they impose requirements regarding "compliance plans."
- D. As a renumbering and reconciliation of previously approved SIP provisions as elements of this Code, the Board of Supervisors additionally designates the following list of sections within this Code, to be presented to the Governor of Arizona for transmittal to the Administrator of the EPA with a request that they be included as elements in the Arizona SIP without operational limitation:
  1. §§1-1-010.C (2/22/95) and 1-1-010.D (2/22/95) *Declaration of Policy*
  2. Chapter 2, Article 8 (As amended ~~5/14/97~~ 12/10/08) *Visibility Limiting Standard*
  3. Chapter 3, Article 8 (2/22/95) *Open Burning*
  4. [Reserved]
  5. [Reserved]
  6. [Reserved]
  7. [Reserved]
  8. [Reserved]
  9. [Reserved]
  10. [Reserved]
  11. [Reserved]
  12. §5-18-740 (2/22/95) *Storage of Organic Compounds - Organic Compound Emissions*
  13. §5-19-800 (2/22/95) *Loading of Volatile Organic Compounds - Organic Compound Emissions*
  14. §5-21-920 (2/22/95) *Fossil Fuel Fired Industrial and Commercial Equipment Standard Applicability*
  15. §5-21-930 (2/22/95 and 7/12/00) *Fossil Fuel Fired Industrial and Commercial Equipment Particulate Emission Standard*
  16. §5-22-950 (2/22/95) *Fossil Fuel Fired Steam Generator Standard Applicability*
  17. §5-22-960 (2/22/95) *Fossil Fuel Fired Steam Generator Sulfur Dioxide Emission Limitation*
  18. §5-24-1030.F (2/22/95) *Generally Applicable Federally Enforceable Minimum Standard of Performance - Organic Compound Emissions*

19. §5-24-1030.I (2/22/95) *Generally Applicable Federally Enforceable Minimum Standard of Performance - Carbon Monoxide*
20. §5-24-1032 (2/22/95) *Federally Enforceable Minimum Standard of Performance - Process Particulate Emissions*
21. §5-24-1040 (2/22/95) *Carbon Monoxide Emissions - Industrial Processes*
22. §5-24-1045 (2/22/95) *Sulfite Pulp Mills - Sulfur Compound Emissions*
23. §5-24-1050 (2/22/95, as amended June 20, 1996) *Reduced Sulfur Emissions - Default Limitation*
24. §5-24-1055 (2/22/95) *Pumps and Compressors - Organic Compound Emissions*

Chapter 2. - Ambient Air Quality Standards  
Article 8 - Visibility Limiting Standard

**2-8-302. Performance Standards - Hayden PM<sub>10</sub> Nonattainment Area**

- A. Subject to the exemption provided in subsection B, the provisions of this Section shall apply to new and existing sources of fugitive dust within the following a source categories:
1. Construction;
  2. Roadway building, use and maintenance;
  3. Bulk material handling, storage and transport.
- B. These performance standards shall not apply to any source or source category that the Control Officer and the Administrator both find has been shown to not contribute significantly to PM<sub>10</sub> levels in excess of the NAAQS.
- C. This section shall apply within the Hayden planning area PM<sub>10</sub> nonattainment area, as defined at 40 CFR §81.303.
- D. The opacity of any plume or effluent, from a source described in subsection (A), shall not be greater than 20%.